

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

TEXAS BRAND BANK,

Plaintiff,

v.

LUNA & LUNA, LLP,

Defendants.

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CIVIL ACTION NO. 3:14-CV-01134-P

**PLAINTIFF’S RESPONSE, SUBJECT TO MOTION TO REMAND, TO DEFENDANT’S
MOTION TO STAY OR ABATE (DENOMINATED NOTICE
REGARDING POTENTIAL RECOVERY OF FUNDS)
[DOCS 17 AND 18]**

Texas Brand Bank (“Plaintiff”) responds to Defendant Luna & Luna, LLP’s (“Defendant”) Motion to Stay or Abate (Denominated Notice Regarding Potential Recovery of Funds) [DOCS 17 and 18], as follows:

1. Two years ago, Federal authorities apparently trapped some funds, and now Defendant asks this Court to bring this case to a halt. Defendant has put several carts before its diminutive horse. First, nothing should deter this court from remanding the case to the state court where it belongs. Once the case is remanded, the state court, which will resolve Plaintiff’s summary judgment motion or preside over the trial, should be the court to decide the alacrity or lack thereof with which the pretrial schedule proceeds.

2. Second, Defendant’s computers were hacked and its money taken more than two years ago, and the parties are no closer to recovering those funds now than they were then. Indeed, Defendant’s attorneys claim that their first communications with the FBI were in June 2014, almost two (2) years after the fact. There has been no indication from the United

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States Attorneys' Office that it intends to prosecute, or even initiate, a forfeiture action or any other procedure to recover the allegedly trapped funds. If any such procedure is begun, there is no limit as to how long it might take. If it is begun and successfully concluded, there is no guarantee that the funds will be restored to the "victim." The mere fact that Federal authorities have trapped some funds is no basis to abate or stall this this lawsuit. Simply stated, there is no timeline of activity that supports the proposition that the funds will be recovered and eventually distributed to the "victim" in the foreseeable future. Accordingly, there is no reliable basis to forestall justice in this lawsuit.

3. Although its computers were hacked, and its money stolen, Defendant is hardly a "victim" here. As Defendant admits, the Bank agreed to restore the stolen funds to Defendant's accounts until this matter is adjudicated or otherwise resolved. Thus, the delay that Defendant requests harms only Plaintiff, which has now lost the benefit of \$1.8 million dollars for over two (2) years.

4. Plaintiff is a proponent for both justice and judicial economy. Here, justice is the restoration of Plaintiff's funds to Plaintiff; and judicial economy is best served by ruling on Plaintiff's Motion to Remand. Neither justice nor judicial economy will be served by putting this case on a slower boat than it is already on.

Respectfully submitted,

s/ David Taubenfeld

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CERTIFICATE OF SERVICE

The foregoing document was electronically submitted with the clerk of court for the U.S. District Court, Northern District of Texas, using the Court's electronic case filing system. I hereby certify that a true and correct copy was served on the following counsel of record electronically in compliance with the ECF guidelines and the Federal Rules of Civil Procedure on the 19th day of August, 2014.

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